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FEDERAL COMMUNICATIONS COMMISSION
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May 16, 2001

VIA HAND DELIVERY

Mr. David Furth, Senior Legal Advisor

Wireless Telecommunications Bureau

Federal Communications Commission

445 12th Street, S.W.

Washington, D.C. 20554

Re: **PETROLEUM COMMUNICATIONS, INC.**
Ex Parte Presentation
Gulf of Mexico Cellular Rule Making Proceeding
WT Docket 97-112; CC Docket 90-6

Dear Mr. Furth:

On behalf of Petroleum Communications, Inc. ("PetroCom"), we take this opportunity to respond to a recent letter addressed to you on behalf of MobilTel, Inc. regarding the referenced proceeding.¹

MobilTel's letter asserts that PetroCom inaccurately views this proceeding merely as a dispute between Alltel and Bachow/Coastel over Mobile Bay. However, it is MobilTel's assessment that is inaccurate. The Mobile Bay dispute comprises just one portion of the evidence submitted in the proceeding. PetroCom's position, accurately stated, is that the totality of the record evidence, including Mobile Bay, does not even remotely support the radical overhaul of the Gulf cellular licensing rules advocated by MobilTel.

In any event, MobilTel offers nothing to show that this proceeding is more than a rehash of the Mobile Bay dispute. Its letter simply observes that it is a B-side carrier that has supported the neutral zone proposal with "Further Reply Comments" filed on May 30, 2000. On the first page of its letter, MobilTel states, "As explained in the Further Reply Comments, MobilTel has had difficulties serving subscribers along the shoreline because of the current prohibition against any extensions by land carriers into the CGSA of the GMSA licensees (Emphasis added)." MobilTel's Further Reply Comments, however, explain nothing. They merely state *verbatim* (at page 1) what MobilTel's letter states (at page 1), without providing any evidence at all to

¹Letter dated March 30, 2001 from Paula Deza (Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C.), to David Furth.

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support its allegation of “difficulties serving subscribers.” To support this same allegation, MobilTel’s letter simply refers to its Further Reply Comments, a brazen attempt to use no evidence as evidence.

MobilTel has provided no evidence of “difficulties serving subscribers” due to the existing licensing rules. In its July 2, 1997 comments, MobilTel does not even claim it has such difficulties in stating (at page 6), that it “has built out its system to cover most of the land along the coast of the Gulf” with only “a few pockets of unserved coastal territory [...]” The same comments (at page 5) describe the coastal area of Louisiana where it provides service as consisting “primarily of water and marsh, with no roads or power facilities” which presumably would also describe those “few pockets” of unserved territory. Aside from there being few, if any, subscribers in these “few pockets” of water and marsh who require service to begin with, absolutely no blame can be assigned to the Commission’s rules for MobilTel’s purported “difficulties serving subscribers.” If MobilTel subsequently had such difficulties, it has not documented them.

Repeated, unsupported allegations should not be the basis for adopting an unprecedented “neutral zone.” Claims unfounded in credible evidence are claims that must be rejected.² MobilTel’s words exemplify the kind of throw-away arguments the land carriers routinely toss out, fearing nothing to lose, in a riskless bet to win 10 miles of free service area in the form of a “neutral zone” that will be swiped from the Gulf carriers. The land carriers seem to think, “Who knows? The Commission might go for it. We’ve nothing to lose so why not try?”

MobilTel acknowledges that roaming charges paid to PetroCom are by agreement, but now complains about them. Apart from failing to support the existence of its alleged “difficulties,” MobilTel does not challenge that PetroCom’s charges reflect the higher costs of building and maintaining a cellular network in the Gulf of Mexico.³ Nor does it challenge: (1) PetroCom’s summary of the record showing scant evidence of any coverage or service problem to begin with, except for Mobile Bay and Florida; (2) PetroCom’s showings that seamless coverage can be accomplished along the Gulf coast under the existing rules through co-location and extension agreements, just as it has been accomplished among adjacent land systems; and (3) the Dennis Study showing there is no unauthorized subscriber capture on land.⁴ MobilTel ends up conceding all of these points.

The Gulf roaming agreements have been in place for years. Why have MobilTel and the other land carriers waited until now to make such a huff about roaming rates? Because, knowing they’ve failed to make the case for a 10-mile service area grab based on fictitious “difficulties,” they cynically resort to “customer

²See *Aircell, Inc.*, 15 FCC Rcd 9622 (2000).

³See PetroCom’s March 1, 2001 ex parte presentation, p. 3.

⁴*Id.*, at pp. 1-2.

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complaints” about roaming rates to achieve the same objective.⁵ A rule making is not the place for rate regulation, either directly by prescribing rates or indirectly by adopting some sort of “zone” that minimizes the area in which certain rates would be applied.⁶ In short, the Commission cannot, as a matter of law, adopt in this rule making a “neutral zone” based on allegedly “high” rates. Nothing in the record of this proceeding supports such a radical proposition. The Commission therefore should reject the “neutral zone.” Instead, it should either maintain the status quo or adopt the PetroCom/U.S. Cellular proposal.⁷

Sincerely,



Richard S. Myers
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Attorneys for Petroleum Communications, Inc.

cc: David Furth
James D. Schlichting
Roger Noel
Lauren Kravetz
Magalie Roman Salas

⁵MobilTel submitted no such “customer complaints” for the record.

⁶See Communications Act of 1934, as amended, 47 U.S.C. §151 et seq.

⁷U.S. Cellular’s long experience in the cellular industry supports the feasibility of this proposal over the objections of MobilTel and the other land carriers whose claims are unsupported by record evidence.